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VIOLATION OF THE 12-HOUR RULES: THE TUG CHINOOK STRIKES AND DAMAGES THE LAKE WASHINGTON BRIDGE

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[Publication History: We originally published this report as GCMA Report #R-308. We subsequently updated the report four times by May 19, 2004 to reflect new information. On June 1, 2006 we added further information on the case by combining it with GCMA Report #R-406 previously published separately. We also renumbered it as R-370B to reflect that it is one in a series of cases dealing with documented 12-Hour Rule violations.]

INTRODUCTION

Many "lower-level" mariners in both the towing and offshore oil sectors of the marine industry work on vessels that operate under the "two-watch" system.

GCMA watched and reported to the Coast Guard and to Congress that this system is widely abused since mariners are often asked or simply expected to operate beyond the

legal work-hour limits of 12 hours in any consecutive 24-hour period (i.e., the "two-watch" system).

Largely as a result of complaints lodged by the Gulf Coast Mariners Association in their book titled Mariners Speak Out on Violations of the 12-Hour Work Day, the Coast Guard "clarified" the 12-hour rules by issuing G-MOC Policy Letter #04-00 dated September 11, 2000 and Change #1 the following year. The policy outlines and clearly delineates responsibilities of 1) employers, 2) mariners, and 3) the Coast Guard. A copy of this policy letter is available on request or on our web site as GCMA Document #R-258.

Establishing watches is always the job of the vessel's Master. On a vessel with two licensed officers, federal statutes limit both the designated master and the mate/pilot to working a 12-hour day. Consequently, the master may establish a 6-hour on-duty and 6-hour off-duty watch schedule (6 and 6) although equivalents such as 12-and-12 or other time-balanced schedules are possible.

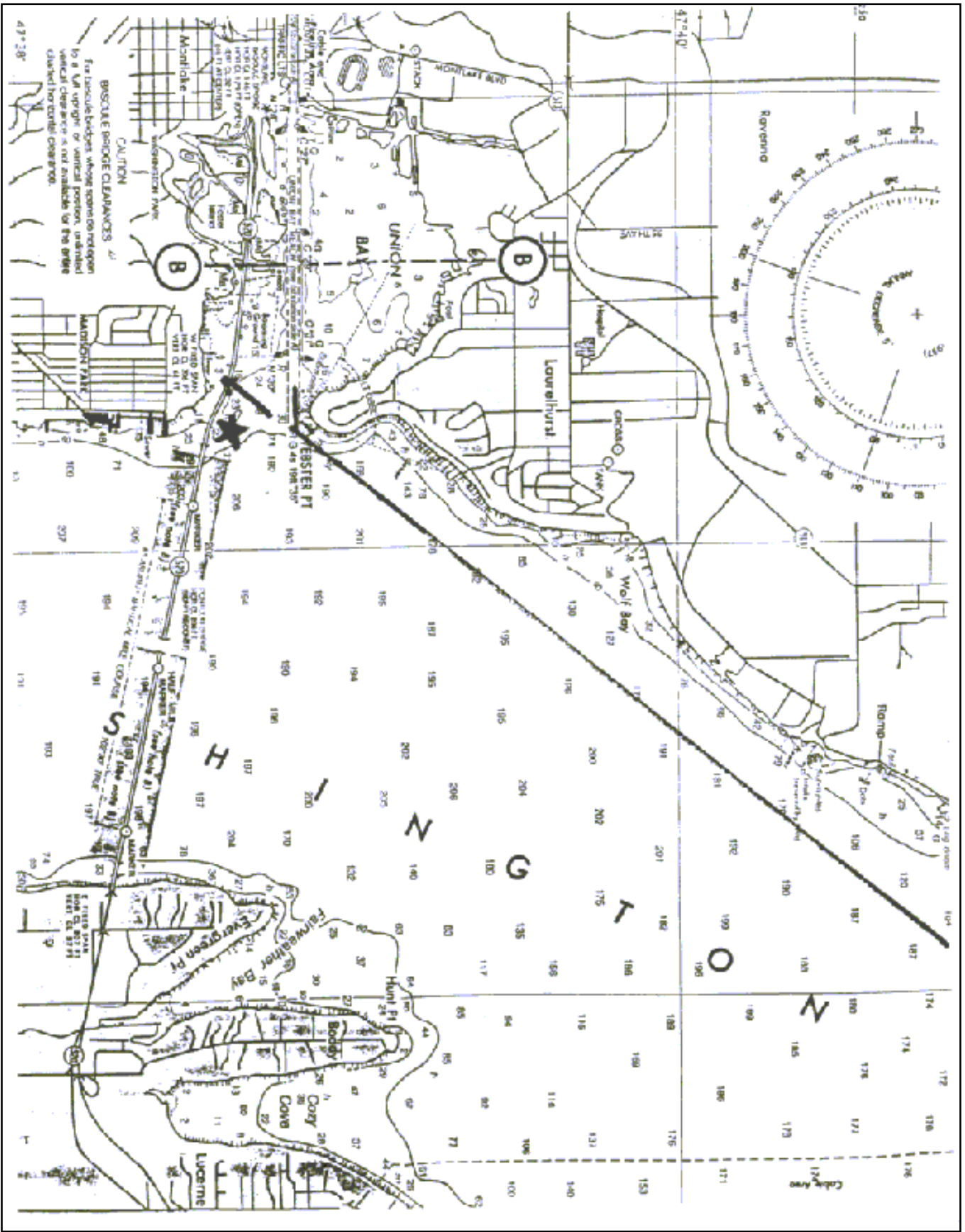
The abuse comes when a licensed officer must perform additional or specified duties beyond and outside of standing his watch. The abuse can be subtle or it can be blatant. In the case covered by this report, the Coast Guard identified company policies as the culprit. The result of violating the "12-hour rules" was predictable: the master admitted his guilt and reached a "settlement agreement" with the Coast Guard. The Coast Guard imposed an administrative penalty on the master and suspended his license!

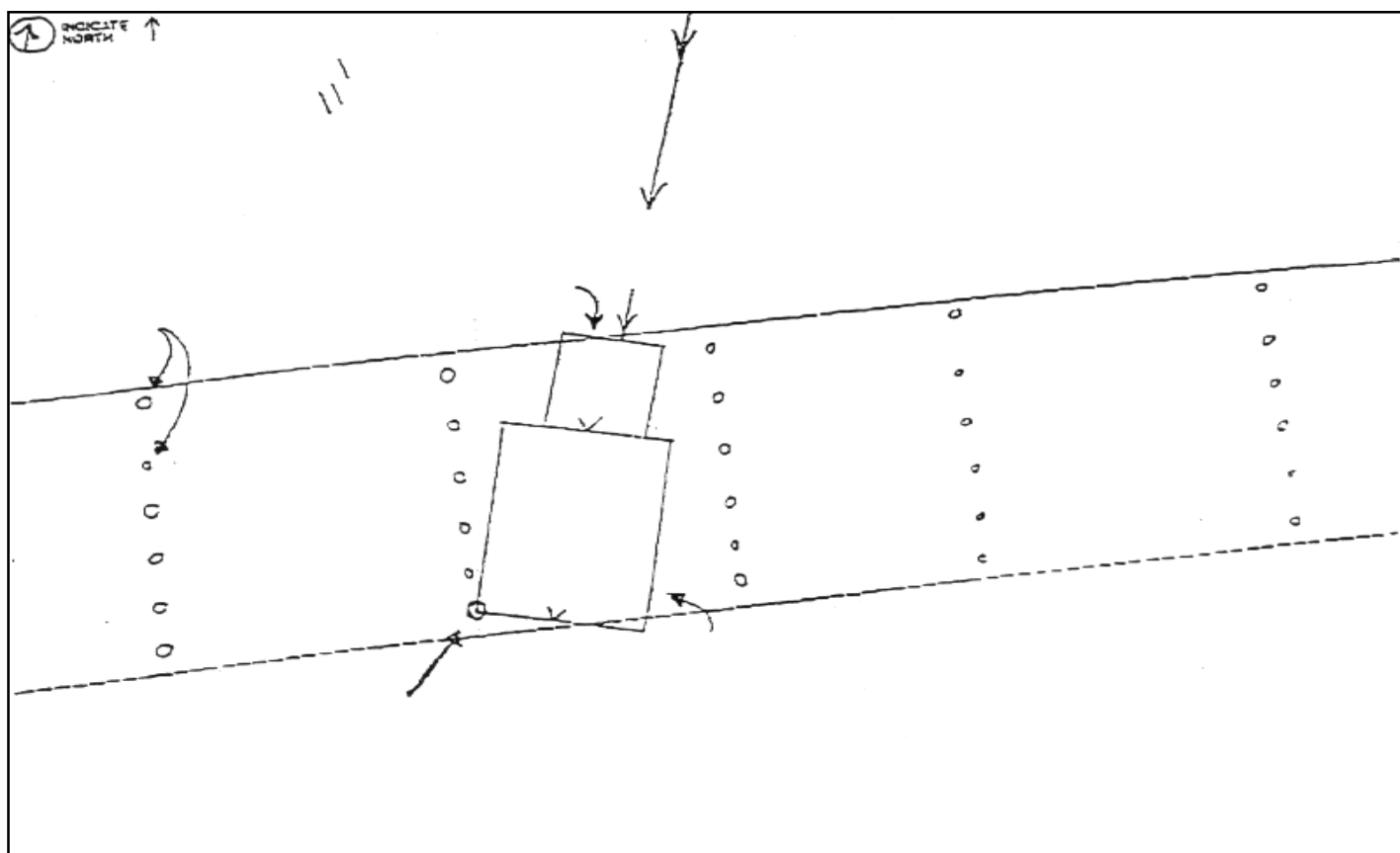
The information that follows comes from the Coast Guard's Marine Casualty Investigation Report furnished to GCMA under the Freedom of Information Act. We edited the report to reduce repetition and to improve its readability. The Coast Guard redacted the names of persons involved in the accident, and, although prominently mentioned in Seattle newspaper articles following the accident, we found no useful purpose in identifying the mariner.

THE ACCIDENT

At approximately 0240 on July 29, 2000, the empty gravel barge NWA-100, being pushed ahead by the tug CHINOOK, allided⁽¹⁾ with and severely damaged one of the pilings supporting the western highrise of the State Route 520 bridge spanning Lake Washington. The SR-520 bridge is a mile-long pontoon bridge across Lake Washington that carries heavy commuter traffic to and from Seattle from the east shore of the lake. The damaged section is part of a highrise bridge supported by concrete pillars located approximately 0.3 mile south of Webster Point. The vessel struck the bridge while transiting from Kenmore, Washington, en route to Pier 1 in Seattle. **[Vocabulary: Allision, allided = Striking a fixed object, in this case, a bridge.]**

Damage to the barge was limited to a slight dent and scrape on the starboard bow, while the M/V CHINOOK suffered extensive damage to its mast, radio antennas, and radar antenna as it passed under part of the bridge. Damage to the SR-520 bridge⁽¹⁾ consisted of cracking and separation of the southernmost piling in a series of six pilings supporting the western highrise of the bridge span, and resulted in closing one lane of the bridge for 11 days. No injuries or pollution occurred resulting from the allision. As





Tugboat Captain's Fast Action At Last Moment Saves The Bridge But Damages One Bridge Support Concrete Piling. One Lane Of Traffic Must Be Closed Until Bridge Repairs Are Completed. Not to scale.

is the case with every "Serious Marine Incident"⁽¹⁾ drug and alcohol tests were conducted on both the master and his mate with negative results. The initial estimate for the temporary repair of the bridge was \$250,000. ⁽¹⁾ Defined at 46 CFR §4.03-2(a)(4) as damage to property over \$100,000.]

Vessel particulars. The M/V CHINOOK, official number D299737 is a 60 foot, 78 gross register ton, 1020 horsepower, U.S.-flag documented, twin-screw towboat of steel construction. The vessel built in 1965 in Reedsport, Oregon, had a current, valid documentation certificate that expired in September 2000. The tug was outfitted with two (2) radars, VHF-FM radios, and a fathometer. Both radars were on with one on standby at the time of the allision but were not outfitted with proximity alarms. Barge NWA-100, official number D298799, was a 237-foot, 1829 gross ton freight barge of steel construction currently in service for transporting gravel. The barge, built in 1965, had a current, valid documentation certificate that expired in October 2000. The barge previously had a Certificate of Inspection that expired in November 1990 but the barge owner no longer maintained a current Certificate of Inspection, nor was he required to do so at the time of the accident.

Crew and licenses. The master held an Operator, Uninspected Towing Vessel (OUTV) license issued on March 17, 1998 that would expire on March 17, 2003. The license had a radar endorsement effective until that date.

The mate held a master, 1,600 ton, near coastal license issued on February 12, 1997 that would expire on February 12, 2002 with a radar endorsement effective until January 31, 2002. The crewman/engineer ("deckineer") had an able seaman (limited) merchant mariner document with a valid lifeboatman endorsement issued on September 9, 1996 that would expire in 2001.

Weather: The visibility was unlimited; the winds were calm and variable at less than 3 knots with no seas and the air temperature was 60-63°F.

SUMMARY OF EVENTS.

At 0150 on July 29, 2000, the tug CHINOOK departed Kenmore, WA, pushing the empty gravel barge NWA-100 en route to Pier 1, Seattle. Onboard during this transit were the master, mate, and a deckhand/engineer. The master and mate usually split the navigation watch in a 6-hour watch rotation.

After picking up the barge in Kenmore at 0150, the master assumed the navigation watch, while the mate remained below in his stateroom. The deckhand was on watch making designated rounds of the vessel. Before departing, the master attempted to contact the bridge tender by mobile phone and left a voice message to arrange for lifting of the Montlake Cut bridges around 0300.

The tug and barge proceeded down Lake Washington at a speed of approximately 7 knots. At around 0230, while approaching Webster Point located 2000 yards east of the Montlake Cut bridge, the master slowed the vessel to 5 knots and made another attempt to contact the bridge tender via VHF-FM but received no reply. The master slowed the vessel again; this time to 3 knots to time his arrival at Montlake Cut bridge with the 0300 scheduled lift. The master stated that he then started to make the turn around Webster Point. This is the last thing he remembered doing prior to suddenly seeing the bridge only 100 yards ahead of him.

The distance from Webster Point to the SR-520 bridge is 600 yards. At a speed of 3 knots, it would have taken the M/V CHINOOK 6 minutes to go from Webster Point to the SR-520 bridge. The master remembers hearing a noise and looking up to see the SR-520 bridge 100 yards ahead, with the tug and barge approaching the western highrise support pilings from the northeast. Seeing the bridge support pilings directly ahead, the master reversed both engines to full astern to try to slow the vessel and tow. Realizing the vessel was not slowing fast enough to avoid the pilings, the master turned the rudder hard to port and went ahead on the starboard engine. This maneuver succeeded in turning the bow of the barge slightly to port and enabled the barge to miss the first five support pilings. However, this maneuver was not enough to slow the momentum of the vessels and at approximately 0240 to 0245, the barge allided with the last support piling, cracking its hollow cement structure.

The top of the M/V CHINOOK's pilothouse, at 43 feet above the water, was able to go under the bridge but the mast, radio antenna, and radar antenna sheared from the top of the pilothouse as the boat followed the barge under the bridge.

The mate was awakened by the impact and immediately went on deck to see what happened. After realizing what had occurred, went up to the bridge to make sure that the master was okay. When the vessel and tow was stopped, the master proceeded to back the barge and tug out from under the bridge.

Seattle Harbor Patrol Unit 453 was on the scene within 15 minutes of the incident to assist and complete an incident report at 0311. Afterwards, the Seattle Harbor Patrol escorted the boat and barge to Sea Coast (company) moorings located at 2700 West Commodore Way, Seattle.

"911" tapes secured from the Seattle Police show two calls received relative to the allision although they proved to be of little value. Reporting parties did not directly observe the incident but were only aware of it after it occurred. Shortly after the vessel moored, an initial interview was held with the master, mate and deckhand, the Sea Coast operations manager, and their regulatory manager.

During the interview, the Master stated that he "may have fell asleep or blacked out" just before the allision. A secondary interview was conducted with the master and mate on August 7, 2000. Drug and alcohol tests were conducted after the initial interview. The master submitted to a physical examination on August 4, 2000. No evidence of a seizure disorder or cardiac abnormality was detected during the exam.

On August 11, 2000, subpoenas were issued to Sea Coast Towing, Inc. to produce the following items:

- Vessel Operations Manual.

- Company Policy and Procedures Manual.
- Training guidelines or training plans for vessel operators and crewmen.
- Vessel logs for the M/V CASCADE and M/V GLACIER (e.g., other company vessels) from July 15 through July 31, 2000.
- Vessel logs for M/V CHINOOK from July 1 through July 26, 2000.
- Payroll logs for the period of July 1 through July 29, 2000.
- Training records for all three crewmembers for a 6-month period prior to July 29, 2000.

FINDINGS OF FACT

The M/V CHINOOK, pushing the barge NWA-100, departed Kenmore at 0150 on July 29, 2000 en route to Pier 1, Seattle. The master was a licensed operator for 27 years, had extensive experience as operator of uninspected towing vessels, and was on the sixth issue of his OUTV license. He made numerous trips in Lake Washington and the Puget Sound area during his employment with Sea Coast Towing and on other industry vessels. He was on the navigation watch during the transit from Kenmore to Montlake Cut at the time of the allision.

The licensed officer on watch is responsible for fixing the position of the vessel and plotting it on the appropriate chart in intervals of no more than every 30 minutes. This is company policy stated in the Sea Coast Vessel Operations Manual, section 2.3.1. It recommends fixing and plotting the vessel's position at an interval of 30 minutes. Time intervals between plots may be decreased at the master's discretion. However, no fixes or course track lines of the transit were plotted on the local chart. Current weekly Local Notices to Mariners were available to the master and all other publications on the vessel were current. All navigation equipment onboard was available and operational at the time of the allision.

No mechanical discrepancies or engine malfunctions aboard the vessel were noted or logged.

The mate was asleep below in his stateroom and the deckhand was in the galley at the time of the allision when barge NWA-100 allided with the southernmost piling supporting the western highrise of the SR-520 bridge causing a crack, and separation of the support piling. However, the mate was not designated to act as an "Sea Coast Towing Co. Qualified Master"⁽¹⁾ aboard the M/V Chinook even though he held a 1,600-ton master's license. ⁽¹⁾ *An "Sea Coast Towing Qualified Master" is a company designation. Sea Coast Towing Co. is a member of the American Waterways Operators (AWO) and follows the Responsible Carrier Program (RCP) – a Safety Management System.]*

The Sea Coast Vessel Operations Manual requires the master to be up and present during all landings and departures with a tow; all transits of Lake Washington from Lake Washington Ship Canal to Kenmore; and all bridge transits.

[GCMA Comment: Company rules required a "Sea Coast Towing Qualified Master" (i.e., the Captain) to be on duty crossing Lake Washington. The Mate did not

hold this company qualification. This caused the Master to be on duty during the transit.]

[GCMA Comment: The Coast Guard can and does fault mariners in administrative proceedings for not complying with established company policies. Refer to 46 CFR §5.27 – Misconduct.]

The Master's work period consisted of 4 weeks on and 1 week off. He was into the 3rd week of his 4-week period on duty at the time of the allision. Towboats transiting the inland waters of Lake Washington traditionally navigate by using radar and radar ranges along with navigation charts available for reference. However, no course tracks or fixes appeared on the local chart.

COAST GUARD ANALYSIS

- Vessel logs for the previous 51 hours showed the vessel operated for extensive periods. Analysis and charting of the vessel's logs with reference to watchkeeping indicated a strong probability of fatigue as the major causal factor in the casualty.
- The master confirmed that he was on watch during all lock transits, bridge transits, transits of Lake Washington, and all barge drops, shifts, and pickups as required or recommended by Sea Coast Vessel Operations Manual, sections 2.3.9 and 2.3.10. With the exception of the actual transit of Lake Washington, the mate and deckhand were on deck assisting with line handling and other deck functions during all above evolutions.
- Over a period of 51 hours from midnight, July 27 to 0245 July 29, the master was off watch for a total of 20 hours and 15 minutes, most of which was a block of 13½ hours.
- Further breakdown of work hours from midnight, July 27 to 0730 on July 28 show the master on watch for almost 24 out of the 31½ hours.
- During the 24-hour period between 0400 July 27, 2000 and 0400 July 28, 2000, the master was involved in the operation of the vessel for at least 16 and possibly as many as 18 hours.
- The master had a rest period of approximately 13 hours and 20 minutes prior to taking the watch for the voyage that resulted in the bridge allision. However, that rest period was interrupted by three instances where his participation in maneuvering evolutions was required. Estimating 15 minutes per evolution, the master's total rest period was only 12 hours and 25 minutes and with the longest uninterrupted period being 5 hours and 40 minutes.

[GCMA Comment: Coast Guard “crew endurance” studies reveal that the human body requires 7 to 8 hours of uninterrupted sleep on a daily basis.]

- The Sea Coast Towing (SCT) Vessel Operations Manual outlines specific times when the master is required to be up

and present on the bridge or on watch. Additionally, the SCT manual also identifies certain geographic areas where the master must be present on the bridge or on watch. If the vessel is manned with a Mate that is designated an "SCT Qualified Master" then the master's presence is not required.

- An "SCT qualified Master" is a Sea Coast Towing company classification for a person who is considered qualified as a master for certain vessels within the company, but is filling the position of a mate.

Reviewing the boat's operational schedule, operating area, and manning, it is difficult if not impossible to comply with the requirements of 46 USC 8104(h), that states: "No licensed persons shall work more than 12 hours in a consecutive 24-hour period" without a mate that has the "SCT qualified master" designation.

CONCLUSIONS

- The investigating officer concludes that the master fell asleep while in charge of the navigation watch on the M/V CHINOOK that led to the barge NWA-100 alliding with the southernmost cement piling supporting the western highrise of the SR-520 bridge.
- Fatigue was a major causal factor contributing to the allision. The master lacked proper rest as evidenced by the vessel logs for the 3 days leading up to the allision. Log entries, confirmed by the master indicate that he was either on watch, or available for 24 out of 31½ hours prior to the allision, and that he was able to get no more than 5 hours and 40 minutes of consecutive rest during that period. It is probable that chronic sleep loss, acute sleep loss, and circadian disruption were all factors in his fatigue.

[GCMA Comment: Logbook entries are important factors to consider in any accident investigation. GCMA asked Congress to give the Coast Guard the authority (they claim not have) to specify certain required logbook entries including the watchstanders, their schedules, and times on duty.]

[GCMA Comment: After the accident, Section 409 of the Coast Guard and Maritime Transportation Act of 2004 stated that: “The Secretary may prescribe by regulation requirements for maximum hours of service (including recording and recordkeeping of that service) of individuals engaged on a towing vessel..”]

- A physical examination conducted on the master did not indicate any medical conditions that could be considered causal factors contributing to the allision.
- This vessel's operations and operational area contributed to the master's lack of proper rest and is a contributing factor in the casualty. The vessel's main operations involve relatively short distance tows, transits through locks, bridges, and restricted areas, and several barge pickups and drops. In order to comply with the Sea Coast Vessel Operations Manual, the master was required to be in

attendance on the bridge during all of the evolutions listed above. This type of operation minimizes opportunities for lengthy rest periods.

- Sea Coast's requirements for vessel masters to be present in accordance with their vessel operations manual is a contributing factor in this casualty. With two licensed officers on the vessel, the normal watch rotation is 6 hours on and 6 hours off as stated by the master for a total of 12 watch hours per 24 hour period. Sea Coast's requirement for the master's presence on the bridge during certain operations and in certain geographic areas, increased the time the master was on the bridge, and exceeded the work hour limits established by law and did not comply with Sea Coast's work hour policy.

THE INVESTIGATOR'S RECOMMENDATIONS

1. The Coast Guard (should) initiate an investigation of the master for the following: (a) **Negligence:** Falling asleep while on watch and failing to properly navigate his vessel, causing it to allide with the SR-520 bridge; (b) **Violation of Law:** Violation of 46 USC 8104(h), in that the master worked in excess of 12 hours in a consecutive 24-hour period. (c) **Misconduct:** Violating Sea Coast Towing Company policy by not properly fixing and plotting the vessel's position as required.

2. The Coast Guard (should) initiate civil penalty proceedings against Sea Coast Towing for violation of 46 USC 8104(h) for not ensuring their licensed personnel do not work more than 12 hours in a consecutive 24 hour period.

3. Sea Coast review their Responsible Carrier Program⁽¹⁾ (RCP) manual, specifically sections which mandate the master's presence on the bridge in certain evolutions and geographical locations. The manual must address possible conflicts between this requirement and the 12 hours in 24-hour period work hour limitation. Eliminating or modifying this requirement may reduce the number of hours the master is required to be awake and available, reducing the likelihood of fatigue and ensuring compliance with 46 USC 8104(h). [⁽¹⁾Since Sea Coast is a member of the AWO, and follows their Responsible Carrier Program. AWO decided to work with Coast Guard officials and convene a "Quality Action Team" (QAT) to look into this accident. We later examined the QAT report.]

4. Sea Coast incorporate review procedures for vessel logs at the operations manager level or higher to ensure compliance with federal regulations regarding allowable working hours for licensed personnel. There was no log review procedure in place, with the exception of that done by the billing/payroll departments. With limited knowledge of vessel operations or federal regulations, review at this level would be insufficient to determine non-compliance with federal regulations by vessel personnel.

[GCMA Comment: Officers often record important problems they encounter on the job in the log.

Management is not performing its job if it ignores these problems by not reviewing vessel logs on a regular basis.]

5. Sea Coast should review company policy relative to the manning of vessels with similar operating requirements and areas as the tug CHINOOK. The company's internal qualification requirement (e.g., "SCT Qualified Master") necessary for a mate to operate alone in all areas and operations unduly burdens the masters of those vessels, requiring them to attend to the operations of the vessel during their designated rest period. This practice has an even greater impact on vessels engaged in short voyages through congested waterways, like the M/V CHINOOK. On these vessels, only SCT Qualified Masters should fill the mate's position, eliminating the necessity for the master to supervise vessel operations during his designated rest period.

[GCMA Position: A two-watch system, by its very nature, requires that each watch officer be fully capable of and responsible for navigating the vessel on his watch.]

[GCMA Comment: In comparable Western Rivers towing operations, a company may require that the vessel's Master be physically present in the pilothouse during certain specific events such as passing under certain bridges even when he is off duty. Consequently, this problem is national in scope.]

6. That this investigation be closed. s/Chief Warrant Officer, Investigating Officer.

ENDORSEMENT BY THE OCMI

Concur with findings of fact and conclusions of the investigating officer.

Recommendations:

1. **Concur.**
2. **Concur.**
3. **Concur.** Company requirements published in the Sea Coast Towing, Inc. Responsible Carrier Program Safety Manual, Chapter 2, for the master to attend to certain vessel operations when not on watch, causing him to work more than 12 hours in a 24-hour period, clearly meet neither the letter nor spirit of the Coast Guard regulations covering work periods. Furthermore, this policy conflicts with the company's own policy, published in the same chapter, requiring masters to work no more than 12 hours in a 24-hour period. For this safety manual to serve the intended purpose, these types of conflicts, both with Coast Guard regulations and with other company policies, must be eliminated.

4. **Concur.** Sea Coast's attempt to ensure that persons operating their vessels were qualified to do the job is laudable, but ultimately flawed when a proper relief is not provided to reduce crew fatigue. Burdening the master with supervising vessel operations during the mate's watch in addition to standing his own watch may ensure safe operations on the mate's watch, but it comes at the expense of fatigue for the master. This problem is exacerbated when

a vessel operates on a short route through restricted waterways and requires constant supervision by the master – as was done on the night of the allision. Ensuring that all mates, especially those operating vessels on this type of route, are "SCT Qualified Masters" will eliminate one factor in the fatigue of the vessel masters. Use of a three-watch system instead of the current two-watch system is another alternative to be considered in some circumstances.

[GCMA Position: The “three-watch” system is the most reasonable approach to manning any vessel in 24-hour operation.]

5. **Concur.** A routine review of vessel logs by company managers should be standard procedure. Without such a review there can be no monitoring of compliance with regulations and company policies regarding work hours. Greater oversight of personnel scheduling could have identified the conflicts described in paragraph 3 above, resulting in corrections before this casualty occurred.

6. **Concur.** I recognize there are ongoing international and domestic efforts to improve crew endurance in the marine industry through scientific research. These efforts involve the Coast Guard, the International Maritime Organization and various organizations and companies within the maritime industry. The most recent step in this ongoing effort is the publication of Coast Guard policy (G-MOC #04-00) that clarifies watchkeeping and work-hour limitations for towing vessels, offshore supply vessels and crewboats utilizing a two-watch system. This incident highlights the importance of these efforts. Although this investigation focused primarily on the actions of the master and one towing company, there is potential for safety improvements beyond the involved company. To realize this potential, it is necessary to aggressively audit local towboat company watchkeeping and work-hour policies and procedures for regulatory compliance and to promote best industry practices. Lessons learned will be appropriately shared via the "Vessel Safety Alert" program managed jointly by the Coast Guard and the American Waterways Operators. Case closed. s/ Captain, USCG, OCMI..

[GCMA Comment: GCMA supports these recommendations and the National Transportation Safety Board’s Recommendation M-99-1 that calls for revising existing hours-of-service regulations and replacing them with new “scientifically-based” regulations.]

[GCMA Comment: In response to Section 409 of the Coast Guard and Maritime Transportation Act of 2004, the Coast Guard introduced the Crew Endurance Management System (CEMS). However, they have NOT prescribed regulations for the “recording and recordkeeping of that service” as required by §409. This would verify that mariners keep within the law as intended by Congress to reduce the stress of shift work at sea.]

THE MASTER’S DAY IN COURT

In this case, the tugboat Master was charged with:

- **Negligence:** Wrongfully failing to properly navigate the M/V CHINOOK contributing to the allision with the SR-520 bridge. Falling asleep while in charge of the navigation watch.
- **Misconduct:** Wrongfully violating Sea Coast Towing, Inc's policy by failing to properly affix and plot the vessel's position as required.
- **Violation of Law or Regulation:** Wrongfully violating 46 USC 8104(d) by working more than 12-hours in a consecutive 24-hour period.

The master hired an attorney to represent him in the administrative law proceedings that followed. On September 29, 2000, the attorney denied all of the allegations on behalf of his client.

A hearing date was set for December 19, 2000. However, on November 21st the master entered into a settlement agreement with the Coast Guard for two-months outright suspension of his OUTV license with 6 months remitted on 12 months probation. The master deposited his license with the Coast Guard the following day. A request for a consent order was filed with the Administrative Law Judge (ALJ) on the same day and the ALJ issued the consent order approving the settlement agreement a week later. Following the agreement, the master's license was reinstated on January 30, 2001 with one year's probation.

[GCMA Position: Mariners should seek legal counsel before signing any “Settlement Agreement” with the Coast Guard for any reason. Mariners also should determine the cost of legal representation before deciding upon an appearance before an Administrative Law Judge. We strongly recommend that licensed mariners read GCMA Report #R-342, License Defense and Income Protection Insurance.]

THE COMPANY’S DAY IN COURT

The report also shows that legal action was possible against Sea Coast Towing, Inc., owner of the towing vessel, in that the company failed to ensure that the master did not work more than 12 hours in a consecutive 24-hour period." The report shows 0.1 hours was spent in "investigation, 0.1 hours in "administration," and that there were "no charges filed" against the company.

[GCMA Comment: In our original report we noted unequal treatment of mariners and corporate entities by Coast Guard authorities. In the interest of fairness, both parties should receive equal attention. We would learn, only by chance, that the Coast Guard filed charges against Sea Coast Towing.]

According to newspaper reports, the President of Sea Coast Towing and the master mutually agreed shortly after the accident to place the master permanently on shore duty as a port captain. "He's getting older. Maybe he doesn't need to be out there any more; that's the way he characterized it", the President said. In any event, the master's 30-year career on the water is at an end.

The accident closed one lane of the bridge for 11 days aggravating the commute for thousands of Seattle motorists. Repairs to the bridge were reported in excess of \$500,000.

[GCMA Comment: As you prepare for your license, or upgrade always keep in mind that it is much easier for the Coast Guard to proceed against your license than it is to go after a company even if it is equally to blame.]

GCMA INTEREST IN THIS ACCIDENT, WHAT WE LEARNED AND HOW WE FINALLY LEARNED IT

Several months later, a GCMA delegation attended a MERPAC meeting in Seattle where this story was still making front-page headlines. Our delegation of six inland and offshore mariners visited with the reporter of the Seattle Post-Intelligencer who covered the story, reviewed the Coast Guard accident report, and provided our views on mariner fatigue to the press at the time.

The final accident report indicated that the Master's license was suspended for several months. His name was plastered across the front pages of several Seattle newspapers as a result of the accident. One reporter indicated that the Master would "come ashore" – effectively ending his career at sea. However, the accident report provided us under the Freedom of Information Act indicated that the Coast Guard took no action against the company.

However, in February 2004 we learned that there was "something new" in the CHINOOK case on the internet – only to find that the internet entry was withdrawn for some reason. Our best efforts initiated through the Coast Guard's FOIA office turned up absolutely nothing. Finally, in October 2004, we contacted the Coast Guard Hearing Office in Arlington, VA, and discussed the complaint cited in the "GCMA Comment" above. Shortly thereafter we received the file # MV01002491 on Sea Coast Towing.

The file shows that the Coast Guard reviewed the logs of the M/V CHINOOK for three weeks preceding the accident and determined that **nine (9) violations of the 12-hour rule occurred during that period** and filed a "Civil Penalty" case against Sea Coast Towing.

The attorneys for Sea Coast contended that "if...the marine employee (e.g., the Master) is not compelled by his employer to work in violation of the law, but chooses unilaterally to violate the law...the statutory intent is equally clear: the individual decision-maker will be deemed the violating party." In other words, the Captain was to blame!

The towing company also contended that "...vessel owners cannot reasonably be held responsible for the independent decision of their officers at sea..." and that "Section 8104 was not drafted with the goal of penalizing tug owners and operators for the independent errors of its sea-going officers."

This was particularly interesting because the Master was following written company instructions – instructions that reportedly based on the AWO's Responsible Carrier Program (RCP). The AWO later called a Quality Action Team meeting and raised a smokescreen as detailed later in this report. We were not impressed with their tactics!

The Coast Guard found Sea Coast's arguments "unpersuasive" and did not agree with their attorneys'

interpretation of the law.

The Coast Guard stated in part: "When the subsections in 46 USC §8104 are read together, the intent of the statute is clear: that owners, charterers, or managing operators be responsible for violations of the watch requirements. (*emphasis ours*). In addition, the section attempts to protect the licensed officers and seamen to which it applies by ensuring that, in situations where the requirements of the statute are not met, such seamen will be "entitled to discharge from the vessel and receipt of wages earned."

Of course, many mariners hardly feel "protected" by the law when they have to find another job and possibly face blacklisting by their former employer.

The Coast Guard also noted: "Based upon the clear language of the statute, the Master cannot be responsible for the instant violation. Instead...only the owner, charterer, or managing operator may be held liable for the violation. Regardless of whether Sea Coast educated its masters about the work requirements set forth in 46 USC 8104, it is Sea Coast itself, who will be responsible for such violations. I believe that, if accepted, your interpretation of the statute would have a stifling affect on the maritime community. If Masters were held responsible for violations of the watch standing requirements, vessel operators would be given free reign to acquiesce to such violations...there would be no impetus on the marine employer to ensure that the watch standing requirements were met."

One Lesson Learned

GCMA cautioned its mariners on many occasions not to violate the 12-Hour Rules. In September 2000, about a month after the accident, the Coast Guard published Policy Letter #G-MOC-04-00 that "clarified" the 12-Hour Rule to some extent. However, this "clarification" leaves certain other areas in shadow that are explained in GCMA Report #R-346, Revision 3, Work-Hour Abuse, Whistleblower Protection and "Deadhead Transportation

AWO RESPONDS BY ORCHESTRATING A "QUALITY ACTION TEAM" REPORT (Executive Summary)

During the summer of 2000 a tugboat pushing an empty gravel barge struck a fixed span of the highway 520 bridge in the Seattle Metropolitan area. A United States Coast Guard (USCG) investigation revealed that fatigue, number of work-hours, and conflicts between company policy and work-hour regulations may have been contributing factors causing the accident.

In response the Pacific Region Quality Steering Committee chartered a Quality Action Team (QAT). The QAT was directed to collect "best-practices" for both enhancing crew alertness and complying with existing federal regulations and company policies governing work-hours. This task was to include an examination of rules, regulations and policies as well as specific tug operations as they relate to crew alertness in the towing industry.

In addition the QAT was asked to make recommendations, based upon their best judgment and input from Pacific Region towing companies, as to what

best practices might be employed to promote crew alertness and compliance with the 12-hour rule.

Quality Action Team members were selected for their knowledge and experience. A total of 10 representatives made up the QAT – five (5) from Pacific Region towing companies, two (2) from the USCG, two (2) from the Washington State Department of Ecology (DOE) and one (1) from the Pacific Region American Waterways Operators (AWO).

The Quality Action Team collected best practices and identified factors impacting crew alertness through a qualitative survey administered to a representative cross-section of West Coast towing companies.

Recommendations:

1. Crew Endurance Management Systems (CEMS).The QAT recommended that the American Waterways Operators in conjunction with the USCG develop a Crew Endurance Management System applicable to the West Coast towing industry.

2. Safety Management System Crew Alertness Component. The QAT recommended that the American Waterways Operators (AWO) incorporate the principles of the developed Crew Endurance Management System into the required elements of the Responsible Carrier Program.

3. 12-hour Law Compliance Recommendations. The QAT organized the collected “best-practices” into a guideline to assist towing vessel operators to identify and address specific towing operations that may be at risk of violating the 12-hour rule.

4. Crew Alertness Training. The QAT recommended that towing companies immediately incorporate a module regarding crew endurance factors into their crew training programs. The training should clearly describe a company's policies and procedures for reporting and addressing reduced crew alertness when it is identified.

5. Implementation. The Quality Action Team recommends distribution of this report to the West Coast towing industry and that the recommended best practices, or equivalent, be implemented as an added component to the current Responsible Carrier Program (RCP) audit procedure. The implementation of these best practices among non-AWO companies will best be pursued by the Coast Guard through contacts in Harbor Safety Committees and other industry forums

GCMA Evaluation and Response

Strangely, in the Quality Action Teams “Executive Summary” there is no mention of one of its recommendations as shown on pages 35, 36 and 37 calling for adding a second mate to many towing vessels.

Since many who read this report will never go beyond the “Executive Summary” in the front of the report, they will miss the portions of the report where there is an almost universal complaint about “6&6” watches (i.e., the 84-hour workweek) and will overlook recommendations for manning

changes that suggest the solution in many cases is to add another person to the boat crew. Consequently, the AWO used Coast Guard participation to successfully cover up some major misunderstandings by simply not drawing reader’s attention to them.

The USCG/AWO Quality Action Team did recommend developing a Crew Endurance Management System (CEMS) based upon the Coast Guard research project. The Coast Guard did develop such a system and submitted a report to Congress on the report as required by Section 409(b) of the Coast Guard and Maritime Transportation Act of 2004.

The fact that this Quality Action Team would cover up one recommendation (i.e., adding an extra mate) and then push “crew endurance” (one of the Coast Guard’s pet projects) in its place has very clear implications for many mariners. It also leads us to believe that the true motivation behind management’s approach to “crew endurance management” is to exploit it as simply another tool to use with the help of the Coast Guard to squeeze more work out of lower-level mariners. Industry also would like to see the Federal government pick up many of the training expenses for implementing the Crew Endurance Management System. The wording the QAT places in bold-face type in its report on page 32 lends credence to this suspicion:

“Create a level of crew alertness that consistently enables towing vessel operators to discharge their assigned duties safely and efficiently, thereby minimizing the risk to vessel personnel, the public and the environment.”

GCMA made these points in commenting upon the report in a letter to AWO dated December 23, 2002 with copies to the Commanders of the 11th and 13th Coast Guard Districts, the Washington State Department of Ecology, as well as to two labor unions. As expected, we received no replies from either the Coast Guard, the AWO, or the Washington State Department of Ecology:

GCMA Comments on Specific Sections Of the Quality Action Team Report

After reviewing the report, GCMA as a mariner Association wishes to offer these comments to the American Waterways Operators. Comments refer to sub-headings in the report in order of presentation:

“1.4 (Quality Action) Team Members. We note that of the 10 members of the QAT, there were no representatives from mariner groups. There were two official Coast Guard representatives, two environmental representatives from the state of Washington, one AWO representative, and five (management) representatives of towing companies. We note that there were no representatives from the International Organization of Masters, Mates and Pilots or the InlandBoatmen’s Union or any other labor union or association that participated in deliberations to represent the views of the mariners.

“We want to point out that it was the master of the Tug CHINOOK who was involved in the bridge allision. We believe he was a victim of the illogical and conflicting company policies established by an AWO-member company that he had to obey.

“Frankly, we are surprised that the Coast Guard continues to

sanction and participate in meetings where all sides of a question as important as this one are not represented. It is for precisely this reason that many of our mariners complain that the “partnership” between the Coast Guard and management groups such as AWO that appear to deprive them of effective representation and the opportunity to express their views in an open forum from a mariner’s perspective. GCMA is on record as working to establish an effective tripartite arrangement of labor, management and government interests working in harmony...as is included in many IMO and ILO treaty arrangements to which the United States is a party.

“1.5 Proceedings, Item 2). “USCG Representatives would focus on fact-finding, rather than enforcement, thereby creating a “no-fault” exchange of information.”

GCMA’s overwhelming experience with the Coast Guard at the local, district and national level is that they have shown absolutely no interest whatsoever in enforcing the 12-hour rule statutes. The result of this no-interest / non-enforcement “attitude” (we haven’t identified it as a policy) is most evident in the May 28, 2002 I-40 bridge allision at Webbers Falls, OK, as well as in the earlier Seattle bridge allision. We believe that those who fail to learn or simply deny the lessons of History are destined to repeat them.

“1.8 Identification of Focus Areas. Category 2- Environmental and Biologic Factors. Point of information: A semi-annual NOSAC meeting held in New Orleans in December 2001 dealt with a number of fatigue studies (consisting of more than 1,000 pages) provided by the Coast Guard and “Prevention Through People” Subcommittee members. The Chair of the Subcommittee pointed out that he found the most pertinent study was U.S. Coast Guard Guide for the Management of Crew Endurance Risk Factors, Version 1.1, Report #CG-D-13-01, prepared by the USCG Research and Development Center, September 2001. In comparing this report to others, we found the Coast Guard showed much greater concern for protecting its own personnel than they ever have shown over the years for protecting the lower-level mariners it superintends.

“2.3 Master’s Liability. “Examination of the Commandant’s Decisions on Appeal revealed a consistent application of the doctrine of the responsibility of the individual in charge of the direction and control of the vessel.”

“Being “on watch” as a mate/pilot and being responsible for the vessel as her “master” are two very different situations. If you are the master, you may have a few additional duties that probably must be discharged after you are off watch. Responsibility is not as easily discharged; it gives rise to stress, ulcers, sleepless nights etc. Like the master of the tug CHINOOK, you are responsible for overseeing the entire operation of the boat after you are relieved and go “off watch.”

“It is these responsibilities that cause a conscientious person to arise and check the mate/pilot, help him “make” certain tough bridges, stand in for him if you don’t know him well or don’t trust his abilities, stay alert and check out strange noises or motions when in his bunk and off duty, keep a close watch on the engineroom and a dozen other off-duty responsibilities that are “common sense” for a mariner. For accepting all this responsibility, a master may be paid a

few extra dollars a day. For management, this is a huge bargain because it under-compensates the master for a third person they really should add to the watch schedule on a boat in 24-hour operation.

“Incidentally, the mention of a “third person” (above) overlooks the fact in our part of the country that many substandard companies operate with only ONE licensed officer on vessels that operate over 12-hours in a 24-hour period.

“Item 2.4. Regulatory Conflicts. G-MOC Policy Letter #4-00 exists largely because of GCMA’s complaints about constant violations of the 12-hour rules not only on towing vessels but also on offshore supply vessels. However, the Coast Guard never extended GCMA the courtesy of even telling us that “Revision 1” to that policy letter was under consideration. We understand that AWO unilaterally requested the change in this policy. Our complaint is not in the revision itself but, rather, that we were never asked to participate in that revision responsible for a direct change in USCG policy.

“Item 2.4. Regulatory Conflicts. We suggest that 46 USC 8104(h) is a statute requiring “an individual licensed to operate a towing vessel may not work for more than 12 hours in a consecutive 24-hour period except in an emergency.”

“We believe that only Congress can change the statute and has taken no action to do so.⁽¹⁾ As we mentioned in the public segment of the last TSAC meeting, GCMA questions this policy letter for other reasons, particularly in its reference to an undefined “neutral time...”⁽¹⁾ [⁽¹⁾GCMA subsequently asked Congress for help on both matters in GCMA Report #R-350, February 19, 2003.]

“Item 3.1 Factors. “Management of Endurance Risk Factors: A guide for Deep Draft Vessels” outlines several “crew endurance risk factors” that carry special relevance for the towing industry. They include: 1) Insufficient daily sleep duration (less than 7-8 hours of uninterrupted sleep).”

“This factor is reiterated in U.S. Coast Guard Guide for the Management of Crew Endurance Risk Factors, Version 1.1, Report #CG-D-13-01, prepared by the USCG Research and Development Center, September 2001.⁽¹⁾ [⁽¹⁾Reprinted as GCMA Report #R-429A (Series)]

“GCMA supports the concept of “crew endurance” training and the scientific efforts underway at the USCG R&D center. However, we balk at certain aspects of how the Coast Guard plans to apply this science to our mariners.

“GCMA respectfully points out that the proposed 7-7-5-5 watch schedule provides less than 7 hours of sleep to say nothing of ensuring that the resulting sleep is “uninterrupted.” When you are tired and worn out before you go on watch, and there is nobody else that you can call upon for relief during your watch, the outcome can be unpredictable and much more costly than consistently providing another licensed officer.

“Item 3.3 Conclusion: Review of Literature. GCMA agrees with the conclusions reached in this section except that we reserve comments on the automatic applicability of any “deep draft vessel” conclusions to towing vessels.

“Item #4. Pacific Region Survey. We find the results of

the survey very informative of regional practices. We find the effort AWO put into this study highly commendable.

“Item 5.3.1.5. 12-hour Law Best Management Practices. “Operational factors leading to non-compliance usually involve a licensed mariner being called to duty off-watch. He or she may already have expended all of his or her available work-hours during a normal watch schedule (such as 6-on/6-off) or, if there are off-watch work-hours available, the duration of the off-watch task may exceed the mariner’s work-hour limit.” GCMA agrees.

“Item 5.3.2. Crew Alertness Training. We agree and believe that this training will be useful in finally achieving the “scientifically-based hours of work regulations” goal set by the National Transportation Safety Board.

“Item 5.3.3. Implementation. Companies not implementing the best practices contained within the recommendation section of this report, or equivalent, should be advised that they do not meet industry standards.”

“Unfortunately, GCMA views this statement as nothing more than a mild and ineffective slap on the wrist. We believe a ringing condemnation of abuses that lead to violations of the 12-hour rule that not only hurt our mariners but threaten the entire towing industry would be more appropriate. This is one reason why mariners must speak vigorously to protect their own interests.

“GCMA Comments in Report #R-308 (now #R-370B) on the SR-520 bridge allision emphasize a number of areas of mariner concern. I am sure you share these concerns as you review our report.

“Captains of the Port are encouraged to meet with representatives of these companies to determine what, if any, steps are being taken to ensure maintenance of crew endurance and compliance with the 12-hour rule.” [Emphasis by underlining is ours.]

“GCMA views with concern the continued operation of **substandard companies** that abuse our mariners and do not comply with the 12-hour statutes and regulations. Unfortunately, the Coast Guard has placed a very low priority on enforcing the 12-hour rule. Essentially, in the past three years, the Coast Guard has “washed out” any investigation of the complaints presented in our book titled Mariners Speak Out in Violation of the 12-Hour Work Day and has done little to resolve current complaints. As you know, the National Offshore Safety Advisory Committee (NOSAC) was the federal advisory committee assigned to resolve lower-level mariners’12-Hour Rule problems that GCMA also presented to TSAC and MERPAC. The showdown occurred in the April NOSAC meeting at Coast Guard Headquarters. As a result of the meeting and lack of any meaningful subsequent action, we have no confidence in the Coast Guard’s willingness or ability to enforce the work-hour statute. Consequently, we will look to Congress in 2003 for redress of our mariners’ grievances.”

**COAST GUARD ASSESSES
CIVIL PENALTY AGAINST COMPANY@**

On January 15, 2004, the Coast Guard Hearing Officer in Arlington, Virginia forwarded an appeal of a Civil Penalty against Sea Coast Towing, Inc. of Seattle, WA, to the Coast Guard’s Office of Maritime and International Law for “final agency action.”

The Coast Guard denied Sea Coast Towing’s appeal and the company was assessed and presumably paid a \$7,500 civil penalty. This followed a preliminary assessment of \$22,000 in lieu of the \$99,000 maximum penalty permitted by statute to be appropriate in light of the circumstances of the violation.

**FINAL AGENCY ACTION
DECISION ON APPEAL OF CIVIL PENALTY
(MV10002491 – Sea Coast Towing, Inc. –M/V Chinook)**

U.S. Department of Homeland Security
Commandant, United States Coast Guard
2100 Second Street, S.W.
Washington, DC 20593-0001
Staff Symbol: G-LMI
Phone (202) 267-1527
Fax: (202) 267-4496

16731
January 15, 2004

Sea Coast Towing, Inc. January 15, 2004 c/o Bauer
Moynihan & Johnson, LLP
Attn: Mr. Thomas G. Waller
2101 Fourth Avenue, Suite 2400
Seattle, Washington 98121
RE: MV01002491; Sea Coast Towing, Inc. M/V CHINOOK
(renamed M/V ISLAND BREEZE) – \$7,500.00

[GCMA Editorial Note: Emphasis by underlining and bold face type is ours.]

Dear Mr. Waller:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MVO1002491, which includes your appeal on behalf of Sea Coast Towing, Inc. ("Sea Coast"), as owner of the M/V CHINOOK, which was subsequently sold and is now operated under the name ISLAND BREEZE. The appeal is from the action of the Hearing Officer in assessing a \$7,500.00 penalty for the following violation:

<u>LAW/REGULATION</u>	Nature of Violation	<u>ASSESSED PENALTY</u>
46 USC 8104(h)	Licensed towing vessel operator working more than 12 hours in a consecutive 24-hour period.	\$7,500.00

The violation was discovered during a Coast Guard investigation of an incident involving the M/V CHINOOK. The incident that prompted the investigation occurred on July 29, 2000, when the empty gravel barge NWA 100, while being pushed ahead by the M/V CHINOOK, allided with a piling supporting the western high rise of the State Route 520 bridge spanning Lake Washington from Seattle, Washington, to Bellevue, Washington. The incident occurred as the vessel was transiting from Kenmore, Washington to Pier 1 in Seattle, Washington. Although the tug and barge sustained only minor damage and neither injuries nor pollution resulted from the incident the bridge sustained heavy damage.

[GCMA Editorial Note: A summary of the towing company's appeal follows.]

On appeal, you contend that "the decision and penalty recommended against [Sea Coast Towing was] arbitrary, capricious and otherwise not in accordance with law." To that end, you note that the "alleged violations were not causally related to the incident itself" because "the statutory violations cited by the Coast Guard occurred up to three weeks before the July 29, 2000 incident.") You further assert that "[n]o violation of the twelve-hour rule-or any other statute or regulation-was found to have caused or contributed to the July 29 event." As a result, you assert that "[a]s a matter of law and statutory intent, there is no genuine dispute but that Sea Coast Towing cannot properly be held accountable for the unilateral decisions of its seagoing captains made in violation of both company policy and unambiguous law.") To that end, you contend that "[t]he statutory scheme underlying 46 USC §8104(j) is seemingly well-reasoned" because it "[r]ecogniz[es] the inability of maritime companies to fully control their employees at sea" and, as a result, "the legislature chose to hold vessel owners accountable under limited circumstances for violations of the twelve-hour rule." Based upon your interpretation of the statute, you contend that if...the marine employee is not compelled by his employer to work in violation of the law, but chooses unilaterally to violate the law ... the statutory intent is equally clear: the individual decision-maker will be deemed the violating party." Citing several federal admiralty cases, you further contend that "vessel owners cannot reasonably be held responsible for the independent decision of their officers at sea". As a result, you conclude that "Section 8104 was not drafted with the goal of penalizing tug owners and operators for the independent errors of its sea-going officers." Your appeal is **denied** for the reasons discussed below.

[GCMA Editorial note: The reasons why the Coast Guard denied the appeal follow:]

As I indicated above, the instant case resulted from a Coast Guard investigation into an allision involving a barge pushed by the M/V CHINOOK and the State Route 520 bridge on July 29, 2000.

During the investigation, the Coast Guard determined, after a review of the M/V CHINOOK's logbooks, that nine violations of 46 USC 8104(h) (the twelve-hour rule) had occurred between July 5, 2000, and July 27, 2000. However, as you noted in both your letter of appeal and in your earlier correspondence to the Hearing Officer, there

was no evidence to indicate that a violation of the twelve-hour rule occurred on the day of the allision. As I noted above, you contend that "the alleged violations were not causally related to the incident itself." The record shows that you addressed this issue more specifically in your letter to the Hearing Officer, dated December 10, 2001, (incorporated by reference into the instant proceedings). Therein, you asserted that "the decision by the Coast Guard to review-post facto-four weeks of wheelhouse logs and time entries of two operating captains in search of statutory violations ... was unwarranted and categorically excessive." At the same time; you further asserted that the Coast Guard's handling of the instant case "calls into question ... an issue of procedural due process and arbitrary and capricious decision-making." Based upon these arguments, it is clear that you believe that the Coast Guard erred in commencing the instant civil penalty case because the violation at issue was not causally linked to the allision. After a thorough review of the record, I do not find your argument, in this regard, to be persuasive.

While I agree with you that the instant case was discovered as a result of the Coast Guard's investigation into the allision, I do not agree that due process requires that a causal link exist between the allision and the violation for the violation to be found proved. While I am not willing to concede that there was no causal connection between the violations involving Captain [name deleted] and the allision, such a finding is simply not necessary. This is not a civil negligence action. Rather, the Coast Guard is alleging violations of statutory law committed by Sea Coast that were uncovered as part of its investigation of the allision. When an operator falls asleep at the wheel due to fatigue, it is only reasonable for the Coast Guard to examine the ship's logs to determine why the master fell asleep. Failure to conduct such an examination would have been derelict. When violations of law are uncovered as a result of that investigation, the Coast Guard certainly has the right to initiate civil penalty proceedings. As to this particular violation, the Marine Violation Charge Sheet shows that it is the result of the fact that the "owner vessel CHINOOK failed to ensure that the licensed operators did not work more than 12 hours in a consecutive 24 hour period on 9 separate days from 05 JUL 00 to 29 JUL 00." Nonetheless, you seem to believe that the Coast Guard erred in initiating the instant civil penalty case during its investigation into the allision, presumably because the Coast Guard would not have learned of the violations if the allision had not occurred. The Coast Guard's civil penalty program is a critical element in the enforcement of numerous marine safety and environmental laws. The civil penalty process is remedial in nature and is designed to achieve compliance through the issuance either of warnings or the assessment of monetary penalties by Coast Guard Hearing Officers when violations are proved. Procedural rules, at 33 CFR 1.07, are designed to ensure that parties are afforded maximum due process during informal adjudicative proceedings. Regardless of the manner in which the violations were discovered, the record shows that, in accordance with the procedures set forth in 33 CFR 1.07, on September 13, 2001, the Hearing Officer issued a preliminary assessment letter in Sea Coast's case. In that letter, the Hearing Officer informed Sea Coast not only of the alleged violation, but also that it had the right to either

request a hearing in the matter, submit written evidence and arguments in lieu of a hearing, or to pay the amount specified in the Hearing Officer's initial notification letter. The record further shows that you submitted written evidence on Sea Coast's behalf to the Hearing Officer on December 10, 2001. Thereafter, on June 7, 2002, the Hearing Officer issued his final decision in the case and, via a letter dated July 11, 2002, you properly appealed that decision to me. Based on the foregoing, I do not see any evidence in the record to indicate that Sea Coast's rights with respect to the instant proceeding have, in any way, been violated.

I will now address the violation. On appeal, you contend that Sea Coast "cannot properly be held accountable for the unilateral decisions of its sea-going captains made in violation of both company policy and unambiguous law." As I noted above, citing 46 USC 8104(j), you contend that in drafting the statute, "the legislature chose to hold vessel owners accountable under limited circumstances for violations of the twelve-hour rule." To that end, you further assert that "[i]f...the marine employee is not compelled by his employer to work in violation of the law, but chooses unilaterally to violate the law ... the statutory intent is equally clear: the individual decision-maker will be deemed the violating party." I do not agree with your interpretation of the statute."

The record shows that Sea Coast is charged with nine violations of 46 USC 8104(h). In relevant part, 46 USC 8104(h) states that "[o]n a vessel to which section 8904 of this title applies, an individual licensed to operate a towing vessel may not work for more than 12 hours in a consecutive 24-hour period" Because 46 USC 8904 applies to towing vessels that are "at least 26 feet in length" and the M/V CHINOOK is 59.6 feet in length, it must comply with the requirements of 46 USC 8104(h). 46 USC 8104(j) states that "[t]he owner, charterer, or managing operator of a vessel on which a violation of subsection (c) [implementing the 8-hour rule for vessels operating on the Great Lakes], (d) [requiring 3 watches for vessels more than 100 tons while at sea], (e) [setting for requirements for seamen including not being required to work alternatively in the deck and engine departments and establishing an 8-hour work day when the vessel is in safe harbor], or (h) [establishing the 12-hour rule] of this section occurs is liable ... for a civil penalty" and adds that "[t]he seaman is entitled to discharge from the vessel and receipt of wages earned." The legislative history of section 8104 states that "[t]he Committee intends that these sections be interpreted in a manner consistent with one another." See H.R. REP. No. 338, 98th Cong., 1st Sess. (1983), *reprinted in* 1983 U.S.C.C.A.N. 924, 993. When the subsections noted in 46 USC 8104(j) are read together, the intent of the statute is clear: that owners, charterers, or managing operators be responsible for violations of the watch requirements. In addition, the section attempts to protect the licensed officers and seamen to which it applies by ensuring that, in situations where the requirements of the statute are not met, such seamen will be "entitled to discharge from the vessel and receipt of wages earned." In that regard, the legislative history of the statute states that "[s]ubsection (i) and (j) prescribe penalties for violations of the provision of this section and, in certain instances, entitles the seamen to discharge and payment of wages." *Id.*

Throughout your appeal you assert that the master of the M/V CHINOOK who "chose on his own not to follow federal law and company policy" should be held liable for the instant violation. To that end, you contend that the federal courts have made clear that "vessel owners cannot reasonably be held responsible for the independent decision of their officers at sea." Based upon my reading of 46 USC 8104, I, disagree with your assertion in this regard. The negligence cases that you cite are not on point here because this is not a negligence case. This case involves Sea Coast's failure to comply with the requirements of 46 USC 8104(h). Based upon the clear language of the statute, the master cannot be responsible for the instant violation. Instead, as I noted above, only the owner, charterer, or managing operator may be held liable for the violation. Regardless of whether Sea Coast educated its masters about the work requirements set forth in 46 USC 8104, it is Sea Coast itself, who will be responsible for such violations. I believe that, if accepted, your interpretation of the statute would have a stifling affect on the maritime community. If masters were held responsible for violations of the watch standing requirements, vessel operators would be given free reign to condone or, at the very least, acquiesce to such violations. While affected mariners would still be able to report violations to the Coast Guard and, per 46 USC 8104(j), be entitled to discharge from the vessel and receipt of earned wages there would be no impetus on the marine employer to ensure that the watch standing requirements were met. As a result, I simply cannot accept your interpretation of the statute.

The record shows that Sea Coast was found to have committed nine violations of the twelve-hour rule in July 2000. Since you have not provided any evidence rebutting the Coast Guard's evidence that Sea Coast did, in fact, not comply with the twelve-hour rule in July 2000, I find the violation proved. At the same time, I note that although you contend that Sea Coast educated its masters about the work requirements established at 46 USC 8104, the record clearly indicates that those requirements were not complied with. As I noted above, as the owner of the vessel, Sea Coast is responsible for ensuring that the vessel complies with the requirements set forth in the statute. Since Sea Coast did not do so, as is evidenced by the continuing nature of the violation, I find the violation proved. The record further shows that the Hearing Officer mitigated the assessed penalty from \$22,000.00 to \$7,500.00 due to evidence submitted concerning Sea Coast's continuing efforts to ensure compliance with the statute. Since you have not provided any additional evidence to support further mitigation of the penalty, I find the penalty assessed by the Hearing Officer to be appropriate under the circumstance of the case.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer's determination that the violations occurred and that Sea Coast Towing, Inc., is the responsible party. The Hearing Officer's decision was neither arbitrary nor capricious and is hereby affirmed. For the reasons stated above, I find the \$7,500.00 penalty assessed by the Hearing Officer rather than the \$22,000.00 penalty preliminarily assessed or \$99,000.00 maximum permitted by statute to be appropriate in light of the circumstances of the violations.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **\$7,500.00** by check or money order payable to the U.S. Coast Guard is due and should be remitted promptly, accompanied by a copy of this letter. Send your payment to: U.S. Coast Guard - Civil Penalties, P.O. Box 100160, Atlanta, GA 30384.

Payments received within 30 days will not accrue interest. However, interest at the annual rate of 1.00% accrues from the date of this letter if payment is not received within 30 days. Payments received after 30 days will be assessed an administrative charge of \$12.00 per month for the cost of collecting the debt. If the debt remains unpaid for over 90 days, a 6% per annum late payment penalty will be assessed on the balance of the debt, the accrued interest, and administrative costs. Sincerely, DAVID J. KANTOR, Deputy Chief, Office of Maritime and International Law, By direction of the Commandant.